

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") made as of this day by and between the BOSTON REDEVELOPMENT AUTHORITY, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts, ("BRA") and the MASSACHUSETTS BAY TRANSPORTATION AUTHORITY, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts, ("MBTA").

WITNESSETH

WHEREAS, the BRA is the owner of certain property located in the City of Boston, Massachusetts and known as South Station; and

WHEREAS, the BRA entered into an agreement dated December 31, 1965 with Henry M. Leen, Esquire, as Trustee of the property of The Boston Terminal Corporation, ("Management and Occupancy Agreement"), which agreement provided for the maintenance of the South Station Headhouse ("Headhouse") by The Boston Terminal Corporation ("BTC") and for the use of the Headhouse by BTC and certain rail carriers; and

WHEREAS, the BRA also entered into an agreement dated December 31, 1965 with Henry M. Leen, Esquire, Trustee of the property of BTC, ("Track License Agreement"), which agreement granted BTC certain rights and easements with respect to the railroad tracks located at South Station; and

WHEREAS, in consideration for the grant of such rights in the Management and Occupancy Agreement and Track License Agreement, BTC obligated itself to perform certain obligations with respect to South Station and to pay certain amounts to the BRA; and

WHEREAS, BTC has not performed any of such obligations since at least April 1, 1976; and

WHEREAS, since April 1, 1976 certain of such obligations have been performed, and certain rights exercised, by the Consolidated Rail Corporation ("ConRail") and the National Railroad Passenger Corporation ("Amtrak"); and

WHEREAS, among the functions being performed by ConRail at South Station has been the maintenance of the commuter rail service on behalf of the MBTA; and

WHEREAS, ConRail has informed the MBTA that it shall no longer perform any commuter rail service at South Station; and

WHEREAS, BTC has informed the BRA that it will not in the future perform any of the aforesaid obligations at South Station; and

WHEREAS, it is a matter of extreme public urgency and necessity that the BRA and the MBTA make all possible provisions for the continuation of commuter rail service at South Station;

NOW, THEREFORE, in consideration of the mutual promises herein contained and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the BRA and the MBTA hereby agree as follows:

ARTICLE I.
GRANT OF LICENSE

1.1. The BRA hereby grants to the MBTA the nonexclusive right and license, upon the terms hereinafter set forth, to occupy the portion of the Headhouse set forth on Exhibit A

attached hereto and hereby made a part hereof, for the purpose of carrying on its commuter rail operations including, without limitation, the use of the concourse shown on Exhibit A to provide its passengers with a waiting area and information and ticket selling facilities. The MBTA shall also have the right to use and occupy such other portions of the Headhouse as may be reasonably necessary for performing functions directly related to such commuter rail service; provided, however, that the BRA may direct the MBTA, at MBTA expense, to close off and secure such portions of the Headhouse as it deems reasonably necessary to insure the public safety, to cause the Headhouse to comply with all applicable laws, ordinances and regulations and to reduce costs of maintaining the Headhouse, and, in such event, the MBTA shall not have the right to use any area so closed off; provided further, however that the BRA may not direct the MBTA to close off any area of the Headhouse which the MBTA reasonably determines to be necessary in order to carry out its commuter rail operations as contemplated herein.

1.2 The BRA hereby grants the MBTA the nonexclusive right and easement to use for the operation of its commuter rail service the tracks located on that portion of Parcels 1, 2 and 3 which is below the horizontal planes defined by the elevations, which parcels and elevations are more particularly described in the Track License Agreement hereby incorporated herein by reference (the "Track Parcel"), and the right and easement to maintain and use, incidentally to such commuter rail service, electric power vaults and lines, steam lines, water lines and similar

facilities on those portions of the land of the BRA described in Schedule II attached to the Track License Agreement and which portions of land are referred to therein as the "Utility Locations."

ARTICLE II
CONDITION OF PROPERTY

2.1 The BRA hereby disclaims any warranties of any nature, express or implied, as to the property which is the subject of the grant set forth in Article I hereof ("Property") including, without limitation, warranties as to the structural integrity of the Property, and any other warranty of any nature, express, implied or otherwise. The MBTA hereby accepts the Property "as is."

ARTICLE III
FEES; COLLECTION AND APPLICATION OF RENTS

3.1 The MBTA covenants and agrees to pay fees to the BRA, at the BRA address for notice set forth in Article VIII or at such place or to such person as the BRA from time to time may designate by notice to the MBTA, commencing on the date hereof and thereafter throughout the "Term" (as herein-after defined), an annual fee equal to \$212,530.00.

Such fees shall be payable in equal monthly installments each in advance on the first day of each month during the Term commencing on the date of first occupancy by the MBTA, whether total or partial. If the first day of the Term is a day other than the first day of a calendar month or if the last day of the Term is a day other than the last day of a calendar month, then the MBTA shall pay a pro-rata portion of such monthly installments based upon one three hundred and sixty fifth (1/365) of the fee for each day of such month.

3.2 Except as hereinafter set forth, the MBTA shall collect promptly when due the rents and additional rents from those tenants in the Headhouse listed on Exhibit C attached hereto. In those cases where the BRA elects to collect such rents, the BRA shall pay to the MBTA such amounts in accordance with Exhibit C. All such rents shall be applied by the MBTA to expenses incurred by it in performing its obligations hereunder, and the excess, if any, of such rents over such expenses shall, subject to the provisions of Section 4.1 hereof, be assumed and paid for by the MBTA. If the amount of such rents exceeds the amount of such expenses, the difference shall be applied to such extraordinary repairs and improvements to the Headhouse as may be directed by the BRA.

ARTICLE IV
MANAGEMENT OF THE HEADHOUSE

4.1 The MBTA shall duly and diligently exercise general supervision over the Headhouse, except for the portion thereof shown on Exhibit B attached hereto and hereby made a part hereof, and the operation and maintenance thereof, and shall cause the Headhouse to be operated in a safe and efficient manner and as reasonably directed by the BRA. In this connection, the MBTA shall make or cause to be made such ordinary repairs and alterations to the Headhouse as may be

necessary, or as may be reasonably directed by the BRA, and shall purchase necessary supplies and make contracts for electricity, gas, steam, telephone, window-cleaning, vermin extension and other services as shall be reasonably required. The MBTA shall promptly notify the BRA if it becomes advisable or necessary to make extraordinary repairs, but the MBTA shall have no obligation to make such extraordinary repairs. Notwithstanding anything else herein contained, MBTA shall not be obligated to expend more than \$285,000 during the Term in the performance of its obligations set forth in this Section 4.1. If this Agreement is terminated prior to the expiration of the Term in accordance with Section 6.1, the MBTA shall not be obligated to expend more than a pro rata portion of such amount based upon One Three Hundred and Sixty-Fifth (1/365) of such amount for each day between the date hereof and the date of such termination.

4.2 The IUA and the MBTA shall have the right to advertise available space in the Headhouse and to negotiate and otherwise deal with prospective tenants but shall not enter into any leases, licenses or other agreements to occupy space without the prior consent of the other.

4.3 The MBTA shall, in connection with the Track Parcel:

- a. pay when due all charges for water, gas, electricity, steam or other utilities used on the "Utility Locations;"
- b. not injure, overload or deface any part of the Utility Locations or permit there any

- auction sale or any nuisance or the omission therefrom of any objectionable noise or odor, or permit any use of the Utility Locations which is improper, offensive, contrary to law or ordinances, or liable to invalidate any insurance, or make or suffer any waste;
- c. keep all property of any kind belonging to the MBTA or any person claiming through it that may be in the said locations at the sole risk of the MBTA; and if the whole or any part thereof shall be destroyed or damaged by fire, water or otherwise, or abuse of water, or by the leaking or bursting of water pipes or sprinklers, or in any other way or manner, no part of said loss or damages is to be charged to BRA in any case whatever; and
- d. not make any alterations or additions or erect any signs within the said locations within the prior approval of the BRA.

Normal, lawful railroad operations shall not be deemed to violate the provisions of Subsection 4.3(b) hereof.

ARTICLE V
INSURANCE

5.1 The MBTA shall procure and maintain all insurance required to be procured and maintained by "Terminal" (as defined in the Management and Occupancy Agreement) and

"Licensee" (as defined in the Track License Agreement) in accordance with the provisions of the Management and Occupancy Agreement and Track License Agreement.

ARTICLE VI

TERM

6.1 The Term of this Agreement shall commence on and terminate twelve (12) months following the date hereof.

Either party hereto may on twenty-four (24) hours prior notice to the other terminate this Agreement.

Upon termination, the MBTA shall remove all goods and effects that are not the property of the BRA and shall peaceably yield up to the BRA the Property.

ARTICLE VII

INDEMNIFICATION

7.1 The MBTA shall pay, and protect, indemnify and save harmless the BRA from and against any and all liabilities, losses, damages, or costs, expenses, including all reasonable attorneys fees and expenses of the BRA and the MBTA, causes of action, claims, demand or judgments of any nature whatsoever (except those that may result from the acts of the BRA) that may be imposed upon or incurred by, or asserted against the BRA by reason of (a) any accident, injury to, or death of any person or any damage to property occurring on the Property or any part thereof (except as may result from

the acts of the BRA); (b) any use, non-use, condition or occupation of the Property or any part thereof or resulting from the condition thereof; or (c) any failure by the MBTA to perform or comply with any of the terms thereof or of any contracts, agreements or restrictions, statutes, laws, ordinances or regulations affecting the Property or any part thereof or the ownership, occupancy or use thereof.

ARTICLE VIII

NOTICES

8.1 All notices given hereunder shall be in writing and shall be deemed to have been properly given if delivered by hand or sent by Registered or Certified United States mail, postage prepaid, return receipt requested, addressed, if intended for the Authority to it at City Hall, Boston, Massachusetts, Attention of the Director, and if intended for MBTA to it at 45 High Street, Boston, Massachusetts.

ARTICLE IX

MISCELLANEOUS

9.1 This Agreement may not be assigned by the MBTA without the prior consent of the BRA, and, in such event, the MBTA shall remain fully liable and bound by every provision hereof.

9.2 Each of the parties hereto shall consent to, execute

and deliver such other and further documents as may be reasonably required by the other so long as such other and further documents are consistent with the terms and provisions hereof, shall not impose additional obligations on any party hereto and shall be in furtherance of the intent and purposes of this Agreement.

9.3 No assent or waiver, express or implied, by any party to any breach of or default in any term, covenant or condition which this Agreement requires to be performed or observed by any other party shall constitute a waiver of or assent to any succeeding breach or for a default in the same or any other term, covenant or condition hereof.

9.4 The execution and delivery of this Agreement by the BRA is subject to the receipt of all consents and approvals required by applicable law, and in the event that the BRA reasonably determines that any such consent or approval has not been obtained, it may terminate this Agreement immediately upon notice to the MBTA.

IN WITNESS WHEREOF, parties hereto have executed this Agreement under seal as of this 14th day of March, 1977.

Attest

J. J. Coffey acting in his capacity as General Counsel

BOSTON REDEVELOPMENT AUTHORITY

By Robert F. Walsh
Robert F. Walsh, Director

Approved as to legal form

Charles J. Spoleotis
Charles J. Spoleotis,
General Counsel

Attest

MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY

By Robert R. Kiley
Robert R. Kiley, Chairman

Signed subject to and on the condition that the insurance liability only extends to and includes public liability to third parties as per phone conversation this date between Robert Green, Esq., for the BRA and J.J. Coffey, Esq., for MBTA and on the further condition that the public liability insurance does not apply to or cover Amtrak passengers. Robert F. Walsh
Robert R. Kiley

MEMORANDUM

MARCH 24, 1977

TO: BOSTON REDEVELOPMENT AUTHORITY
FROM: ROBERT F. WALSH, DIRECTOR
SUBJECT: SOUTH STATION URBAN RENEWAL PROJECT

The Authority in 1965 purchased the South Station property from the Boston Terminal Corporation. The component parts of this purchase included the Headhouse, Concourse, and Track Areas within the larger South Station Urban Renewal Area. The Authority also, on December 31, 1965, executed certain Agreements with the Boston Terminal Corporation granting them certain rights and easements in the railroad tracks but also obligating them to perform certain functions including but not limited to the maintenance and operation of the Headhouse and Concourse Areas. Under the National Railroad and Reorganization Act, the Consolidated Rail Corporation assumed most of these duties as of April 1, 1976, and the Boston Terminal Corporation has in effect ceased operations in the South Station Terminal. In addition to the maintenance of the Headhouse and Concourse Areas, Conrail has maintained commuter rail services on behalf of the Mass. Bay Transportation Authority.

It had been anticipated that the MBTA would assume full control of the commuter rail service at South Station and coordinate their activities with AMTRAK service now being provided at South Station. It was anticipated that Conrail and the MBTA would agree on a transitional period in which Conrail would assume the lead function during transition. Conrail reconsidered their position and notified the MBTA that on March 13, 1977, they would cease all service to South Station and that MBTA would then become responsible for all their employees and the operation of the Station. The elimination of a transition period created a hardship for the continuation of rail services and interrupted for a short period the operation of certain services into South Station. Because of this situation and because of Boston Terminal Company's reluctance to re-assume its previous obligations, it was necessary to enter into short-term emergency agreements with the MBTA and the Boston and Maine Corporation which is handling the commuter service for MBTA. It was necessary to enter into these agreements on short notice and therefore the Authority is being requested to ratify and affirm the execution of these Agreements. An appropriate Vote follows.

VOTED: That the execution by the Executive Director of that License Agreement by and between the BRA and the Trustees of the Boston and Maine Corporation dated March 14, 1977, be hereby ratified and affirmed.

FURTHER VOTED: That the execution by the Director of that certain License Agreement by and between the BRA and the MBTA dated March 14, 1977 be hereby ratified and affirmed.

